1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON 8 AT TACOMA 9 PROTOCHIPS, INC., Case No.: 10 Plaintiff, **COMPLAINT** 11 v. JURY TRIAL DEMANDED **HUMMINGBIRD PRECISION MACHINE** 12 COMPANY A/K/A HUMMINGBIRD SCIENTIFIC, 13 Defendant. 14 15 Plaintiff Protochips, Inc. ("Plaintiff" or "Protochips"), by and through counsel, brings this 16 action against Defendant Hummingbird Precision Machine Company a/k/a Hummingbird 17 Scientific ("Defendant" or "Hummingbird") alleging and saying as follows: 18 I. NATURE OF THE ACTION 19 1. This is an action for patent infringement arising under the patent laws of the 20 United States, 35 U.S.C. §§ 271, et seq., to enjoin and obtain damages for Hummingbird's 21 unauthorized manufacture, use, sale, offer to sell, and/or importation into the United States for 22 subsequent use and sale of infringing sample holders for electron microscopes. 23 24

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II. PARTIES

- 2. Plaintiff Protochips is a corporation organized and existing under the laws of Delaware, with its principal place of business in Wake County, North Carolina.
- 3. Upon information and belief, Defendant Hummingbird is a corporation organized and existing under the laws of the State of Washington, with its registered office and principal place of business located in Thurston County, Washington.

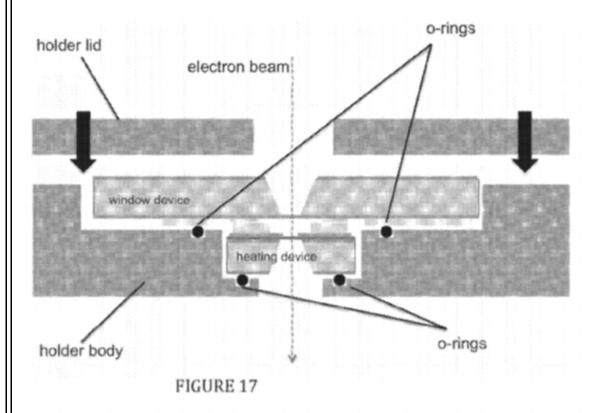
III. JURISDICTION AND VENUE

- 4. This action arises under the patent laws of the United States, including 35 U.S.C. §§ 271 *et seq*. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1338.
- 5. The Court has personal jurisdiction over Hummingbird because Hummingbird resides and maintains its principal place of business in this judicial district. Upon information and belief, Hummingbird regularly conducts significant business activity in this judicial district, including selling and offering for sale infringing sample holders for electron microscopes.
- 6. Venue is proper is this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(b) because Hummingbird resides in this judicial district, maintains a regular and established place of business in this judicial district, and has committed acts of infringement in this judicial district.

IV. FACTS

7. Protochips develops innovative tools for scientists to study nanoscale materials. It designs and sells sample holders for electron microscopes that allow users to see reactions take place in liquids and gases in real time. These products have revolutionized *in-situ* microscopy in just the last few years.

- 8. Recognizing the novelty of Protochips' inventions, the United States Patent and Trademark Office ("PTO") granted to Protochips on May 30, 2017, Patent No. 9,666,409 entitled "Electron Microscope Sample Holder for Forming a Gas or Liquid Cell with Two Semiconductor Devices" ("the '409 Patent").
 - 9. A true and correct copy of the '409 Patent is attached as Exhibit 1.
 - 10. Protochips is the lawful owner of all right, title and interest in the '409 Patent.
- 11. The '409 Patent describes and claims inventions for using two microelectronic devices with two fluidic seals. One embodiment of the invention is shown in Figure 17 of the '409 Patent:



12. Figure 17 shows a cross-section of a sample holder used to create an "environmental" cell in which fluids are sealed between two microelectronic devices of different sizes with two o-ring seals.

- 13. Defendant Hummingbird markets, makes, uses, sells, offers for sale, and/or imports into the United States sample holders for an electron microscope ("Accused Devices") that directly infringe the '409 Patent. The Accused Devices include Hummingbird's Analytical Electrochemistry Tip.
- 14. The Accused Devices have pockets for two microelectronic devices, one larger than the other; and they have two o-ring seals, one with a larger diameter than the other, for sealing fluids between them. The Accused Devices also have electrical contacts that extend into the pocket for the larger microelectronic device. And they have lids covering part of the sample holder body. As such, the Accused Devices infringe at least claim 1 of the '409 Patent.
- 15. The Accused Devices also infringe additional claims of the '409 Patent because their lid includes a hole for the passage of an electron beam, they use o-rings as seals that are concentrically aligned, and they are designed so that one microelectronic is placed on top of the other microelectronic device.
- 16. Protochips has never authorized or consented to Hummingbird's use of the inventions claimed in the '409 Patent.
- 17. Hummingbird has had knowledge of the '409 Patent since at least on or around May 31, 2017, when Plaintiff sent Hummingbird a demand letter.

V. FIRST CLAIM

- 18. Protochips realleges and incorporates by reference the allegations of paragraphs 1-17 above, as if fully set forth herein.
- 19. Protochips is the lawful owner of all right, title, and interest in and to the '409 Patent.

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- 20. Hummingbird, in violation of 35 U.S.C. § 271, makes, uses, sells, offers to sell, and/or imports into the United States for subsequent sale or use sample holders for electron microscopes which infringe claims of the '409 Patent, including the Accused Devices.
- 21. Hummingbird continues to directly infringe, contribute to the infringement of, and/or actively induce others to infringe claims of the '409 Patent.
- 22. Hummingbird's sale of the Accused Devices over the last two years have caused Protochips to lose revenue and market share.
- 23. Unless enjoined by the Court, Hummingbird's continuing infringement of the '409 Patent will cause irreparable injury to Protochips, including loss of market share, loss of business opportunity, damage to goodwill and injury to Protochips' reputation.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Protochips respectfully prays to the Court for the following relief:

- 1. That the Court enter judgment against Hummingbird for infringement of the '409 Patent.
- 2. That the Court issue preliminary and permanent injunctions enjoining Hummingbird and its parents, subsidiaries, affiliates, successors and assigns, and each of their respective officers, directors, agents, servants employees, attorneys, and all persons within their control from making, using, selling, offering to sell, importing, or advertising sample holders for electron microscopes that infringe the '409 Patent;
- 3. That the Court order an accounting to determine the damages to be awarded to Protochips as a result of Hummingbird's infringement;

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5. The Hummingbird, to with 35 U.S.C. § 6. The pursuant to 35 U.S.C. The pursuant to 35 U.S.C. § 7. The just and proper.	nat the Court assess pre-judgment and post-judgment interest and costs against begether with an award of such interest and costs to Protochips, in accordance 284; nat the Court declare this case exceptional and award Protochips attorney fees S.C. § 285; nat the Court grant Protochips such other and further relief as the Court deems
Hummingbird, to with 35 U.S.C. § 6. To pursuant to 35 U 7. To just and proper.	ogether with an award of such interest and costs to Protochips, in accordance 284; nat the Court declare this case exceptional and award Protochips attorney fees S.C. § 285; nat the Court grant Protochips such other and further relief as the Court deems
with 35 U.S.C. § 6. The pursuant to 35 U 7. The just and proper.	284; nat the Court declare this case exceptional and award Protochips attorney fees S.C. § 285; nat the Court grant Protochips such other and further relief as the Court deems
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	JURY DEMAND
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11	s demands a trial by jury be held on all issues so triable.
DATED	his 10th day of August, 2017.
	STOKES LAWRENCE, P.S.
	By: /s/ Shannon M. Jost
	By: /s/ Jacob A. Zuniga
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1	BROOKS PIERCE
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3	By: /s/ Darrell A. Fruth
4	
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1	CERTIFICATE OF SERVICE
2	I hereby certify that on August 10, 2017, I caused the foregoing to be:
3	electronically filed with the Clerk of the Court using the CM/ECF system.
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7	/s/ Shannon M. Jost Shannon M. Jost (WSBA #32511)
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